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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,442	11/10/2003	Sheila Tipay	101	4604
43007	7590	12/08/2005	EXAMINER	
PAUL L. BROWN EMRICH & DITHMAR, LLC 125 SOUTH WACKER DRIVE, SUITE 2080 CHICAGO, IL 60606-4401			GREEN, BRIAN	
		ART UNIT	PAPER NUMBER	
		3611		

DATE MAILED: 12/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/705,442	TIPAY, SHEILA	
	Examiner Brian K. Green	Art Unit 3611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 19 September 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.
 - 4a) Of the above claim(s) 6 and 9-17 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-5,7,8 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

DETAILED ACTION

Election/Restrictions

Applicant's election of species I. (figures 4-7) in the reply filed on Feb. 7, 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 6 and 9-17 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on Feb. 7, 2005.

Claim 6 is directed to the non-elected embodiment shown in figures 12 and 13.

**THE STATUS IDENTIFIER FOR CLAIMS 6 AND 9-17 SHOULD BE
“(WITHDRAWN)”.**

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Cocjin (U.S. Patent No. 3,806,399).

Cocjin shows in figures 1-4 an animated tree including a trunk member (2) having a plurality of openings (34) therein, with said openings having an upper engaging surface (the upper end of

each opening) and a lower engaging surface (the lower end of each opening); an actuating member (17) positioned within said trunk member and extending substantially the length thereof, said actuating member being operable between an extended, upward position and a collapsed, downward position; a plurality of flexible tree branches (3,24) extending through said predetermined openings in said trunk member, with said branches having a proximal end anchored to said actuating member and having a distal end extending outwardly from said trunk member through said openings; wherein when said actuating member is in said extended, upward position, said flexible tree branches contact said upper engaging surface of said openings to force said distal ends of said branches to extend downwardly to the collapsed position, and when said actuating member is in said collapsed position said tree branches contact said lower engaging surfaces of said openings to force said distal ends of said branches to move to an extended position to provide a full sized animated tree. In regard to claim 2, Cocjin shows in figure 2 that the actuating member is driven by a motor member (19). In regard to claim 3, Cocjin shows in figure 2 that the output of said motor member is a rotating drive shaft (the rod projecting out from the motor 19 in figure 2). In regard to claim 4, Cocjin shows in figure 2 that the rotating drive shaft is linked to said actuating member to drive the same. In regard to claim 5, Cocjin shows in figure 2 linkage members (20,22) for moving the actuating member up and down.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cocjin (U.S. Patent No. 3,806,399).

Cocjin discloses the applicant's basic inventive concept except for whether the amount of time it takes to move between the extended position and the collapsed position is between 10 seconds and 5 minutes. It would have been an obvious matter of design choice to move the tree between the extended position and the collapsed position in an amount of time between 10 seconds and 5 minutes since the applicant fails to define any advantage to moving the tree between the extended position and the collapsed position and the time used by Cocjin would work equally as well. Further, it would have been obvious to one in the art to modify Cocjin by moving the tree from the extended position to the collapsed position in the time period specified by the applicant since this would create an amusing and eye-catching display, moving it to fast (faster than 8 seconds) would not create a soothing and relaxing type of display and moving it to slow (more than 5 minutes) would make the tree boring and unappealing to watch.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cocjin (U.S. Patent No. 3,806,399) in view of Byrd et al. (U.S. Patent No. 3,900,637).

Cocjin discloses the applicant's basic inventive concept except for placing guide members within the trunk member to retain the actuating member in alignment with the trunk member. Byrd et al. shows in figure 4 guide members (22, see column 3, lines 40-44) for insuring that the actuating member (20) remains parallel to the tubular trunk (14). In view of the teachings of Byrd et al. it would have been obvious to one in the art to modify Cocjin by attaching guide members within the trunk member since this would insure that the actuating

member remains parallel to the tubular trunk during movement of the actuating member as taught to be desirable by Byrd et al., column 3, lines 40-44. Keeping the actuating member parallel to the trunk member would allow the device to work smoother and to operate in a more reliable manner.

Response to Arguments

Applicant's arguments filed Sept. 19, 2005 have been fully considered but they are not persuasive.

The applicant argues that Cocjin does not disclose or remotely teach a plurality of flexible tree branches extending through the openings, with the proximal end of the tree branches anchored to the push rod. The examiner disagrees since Cocjin shows in figures 1-4 tree branches (3,24) that extend through the openings (34) and are anchored to the push rod (17). The branches are anchored to the push rod (17) by the portions (24) of the branches. The tree branches (3,24) are considered flexible since Cocjin discloses in column 2, lines 49-51 that the branches are folded parallel to the trunk. Also, it is well known in the art that the branches of artificial trees are flexible in order to allow the branches to be bent to a desired position.

The applicant argues that Cocjin does not suggest or teach the timing and operation as defined in claim 8. Cocjin does not disclose whether the amount of time it takes to move between the extended position and the collapsed position is between 10 seconds and 5 minutes. It is considered within one skilled in the art to modify Cocjin to move the tree between the extended position and the collapsed position in an amount of time between 10 seconds and 5 minutes since the applicant fails to define any advantage to moving the tree between the extended position and

the collapsed position and the time used by Cocjin would work equally as well. Further, it would have been obvious to one in the art to modify Cocjin by moving the tree from the extended position to the collapsed position in the time period specified by the applicant since this would create an amusing and eye-catching display, moving it to fast (faster than 8 seconds) would not create a soothing and relaxing type of display and moving it to slow (more than 5 minutes) would make the tree boring and unappealing to watch.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian K. Green whose telephone number is (571) 272-6644. The examiner can normally be reached on M-F 7am-3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (571) 272-6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Brian K. Green
BRIAN K. GREEN
PRIMARY EXAMINER

Bkg
Dec. 5, 2005